

D.U.P. NO. 84-25

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ADMINISTRATOR OF UNFAIR PRACTICE PROCEEDINGS

In the Matter of

STATE OF NEW JERSEY,

Respondent,

-and-

DOCKET NO. CO-84-162

LOCAL 195, IFPTE,

Charging Party.

SYNOPSIS

The Administrator of Unfair Practice Proceedings declines to issue a complaint with respect to an unfair practice charge alleging that the State had transferred a shop steward of Local 195 "despite the fact that there were other employees available to make said transfer." The Administrator finds that the Charging Party failed to supply any information to support an allegation of either anti-union animus or a change in a term and condition of employment. The New Jersey Employer-Employee Relations Act does not by its terms bestow shop steward superseniority rights.

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REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 19, 1983, by Local 195, IFPTE ("Charging Party") against the State of New Jersey ("Respondent") alleging that the Respondent engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). <sup>1/</sup>

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a

<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) discriminating in regard to hire or tenure of employment or term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

complaint stating the unfair practice charge. <sup>2/</sup> The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. <sup>3/</sup> The Commission's rules provide that the undersigned may decline to issue a complaint. <sup>4/</sup>

For the reasons stated below, the undersigned has determined that the Commission's complaint issuance standards have not been met.

The Charging Party's statement of facts, in its entirety, states the following:

On or about December 13, 1983, the Division of Law and Public Safety transferred Dennis Smith, a shop steward of Local 195, despite the fact that there were other employees available to make said transfer.

Although the Charging Party has alleged violations of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5), it has not identified the

<sup>2/</sup> N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

<sup>3/</sup> N.J.A.C. 19:14-2.1

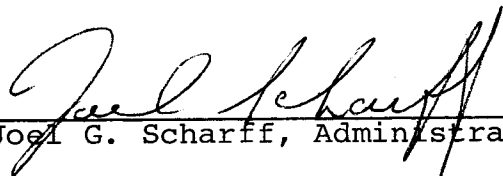
<sup>4/</sup> N.J.A.C. 19:14-2.3

rights under the Act which have arguably been interfered with, its statement of facts does not allege facts supportive of a claim that the employer was motivated to discriminate against the transferred employee due to his exercise of any protected activities as set forth in the Act, and Charging Party has not identified any rule governing working conditions or any contractual provision in its collective negotiations agreement respecting superseniority rights.

The Charging Party has twice been provided the opportunity to review its Charge and to present additional materials in support of its allegations. The undersigned does not find that shop steward superseniority in terms of transfer is a protected right under the Act. See In re State of New Jersey v. Local 195, 88 N.J. 393 (1982).

Accordingly, inasmuch as the Charging Party has failed to posit any nexus between the employer's actions and the employee's exercise of any rights under the Act, and failed to supply any additional information to support an factual allegation of employer anti-union animus or a refusal to negotiate in good faith, the undersigned declines to issue a complaint.

BY ORDER OF THE ADMINISTRATOR  
OF UNFAIR PRACTICE PROCEEDINGS

  
Joel G. Scharff, Administrator

DATED: March 16, 1984  
Trenton, New Jersey